

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DANIEL BAYSDELL,

Petitioner,

vs.

CIVIL ACTION NO. 04-CV-73293-DT  
HONORABLE LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

CAROL HOWES,

Respondent,

**ORDER REQUIRING RESPONDENT TO FILE AN ANSWER AND THE RULE 5  
MATERIALS WITHIN THIRTY DAYS OF THE COURT'S ORDER**

Petitioner, Daniel Baydsell, ("Petitioner"), presently confined at the Crane Correctional Facility in Coldwater, Michigan, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state court conviction for obstructing justice, M.C.L.A. 750.505; and being a third felony habitual offender, M.C.L.A. 769.11. Respondent filed a motion for summary judgment, urging this Court to dismiss the petition for writ of habeas corpus because it contained four claims which had not been exhausted with the Michigan courts. Petitioner filed a response to the motion for summary judgment, in which he argued that all eight of his claims had been exhausted. In the alternative, petitioner asked the Court to stay the proceedings and hold the petition in abeyance while he returned to the state courts to exhaust these additional claims. In the alternative, petitioner asked this Court to rule on the merits of his exhausted claims.

On August 1, 2005, the Court issued an order denying petitioner's motion to hold his petition in abeyance but permitting him to delete his unexhausted claims and to proceed only on the four claims which had been exhausted with the state courts. The Court ordered respondent to file a

supplemental answer which addressed the merits of petitioner's exhausted claims within sixty days of the Court's order, or no later than October 1, 2005, as well as any Rule 5 materials which had not already been provided to the Court. To date, respondent has neither filed an answer to the petition or the required Rule 5 materials, nor have they filed a motion for an additional enlargement of time.

A habeas corpus petitioner who challenges the legality of his state custody is entitled to reasonably prompt disposition of his petition. *See Ukawabutu v. Morton*, 997 F. Supp. 605, 610 (D.N.J. 1998). This Court has the discretion under the rules governing responses in habeas corpus cases to set a deadline for a response to petitioner's habeas petition. *See Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. In light of the amount of time that has passed in this case without a supplemental answer, the Court orders respondent to file a supplemental answer to the petition for writ of habeas corpus within thirty days of this order.

The Court also orders respondent to provide any the Rule 5 materials which it has not already provided at the time it files its answer. The habeas corpus rules require respondents to attach the relevant portions of the transcripts of the state court proceedings, if available, and the court may also order, on its own motion, or upon the petitioner's request, that further portions of the transcripts be furnished. *See Burns v. Lafler*, 328 F. Supp. 2d 711, 717 (E.D. Mich. 2004); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.

Finally, the Court will give petitioner forty five days from the receipt of the respondent's answer to file a reply brief to the respondent's answer, if he so chooses. Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254 states that a habeas petitioner "may submit a reply to the respondent's answer or other pleading within a time fixed by the judge." *See Baysdell v. Howes*, 2005 WL 1838443, \* 4 (E.D. Mich. August 1, 2005).

Based upon the foregoing, the court orders respondent to file an answer and to produce the entire state court record within **thirty (30) days** of the date of this order or show cause why they are unable to comply with the order.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

Dated: December 6, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on December 6, 2005.

s/Marie E. Verlinde

Case Manager  
(810) 984-3290